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ORIGINAL



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Before the Arizona Corporation Commission

AZ CORP COMMISSION
DOCKET CONTROL

COMMISSIONERS

Doug Little
Bob Stump
Bob Burns
Doug Little
Tom Forese

Arizona Corporation Commission

DOCKETED

FEB 19 2016

DOCKETED BY

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J. Alan Smith, Injured party

DOCKET NO. W-03514A-12-0007

COMPLAINANT

VS.

PAYSON WATER CO., INC/BROOKE
UTILITIES, INC.

RESPONDENT

**FILING FOR AN APPLICATION
FOR A REHEARING AND/OR
NOTICE OF FRAUDULENT
CRIMINAL ACTIVITIES
TAMPERING WITH A PUBLIC
RECORD (CLASS 6 FELONY) AND
CONSPIRACY(LIFE IN PRISON).**

Now comes, the complainant J. Alan Smith to request the Commissioners set another hearing date or consider the appropriate legal actions to deal with this legalized injustice.

The notice for the open meeting states in part, the Commissioners may use this open meeting to ask questions.... the parties are requested, though not required to attend. I was under the impression this open meeting was not that important. After making a few phone calls to find out how to appeal the decision to superior court, it was brought to my attention had I been at the open meeting I might not had to appeal. However I believe you could have rejected the ROO on your on motion in light of my exceptions to the ROO. Perhaps no one is taking this entire matter seriously? I do. The ratepayers of the MDC system spent almost a quarter of a million dollars in fines and hauling fees. Someone might pay attention very closely here.

I filed an informal complaint in 2011, filed the formal complaint January 2012, and 3 years later in January 2015 I get a limited hearing before ALJ , and 8 months later I get a different ALJ doing the ROO.

Now I found out that all of the motions, delays and the submission of all the evidence comes down to one final day before the Commissioners.

I request the Commissioners as elected officials of the people in this state, help explain why the ALJ(s) and the Staff have allowed one of the most confusing and convoluted controversies of facts, evidence and tariffs on the public record. I also request the Commissioners to reconsider their motion to pass and approve the recommend opinion and order based on the following;

1. **Payson Roundup 2011**

This public notice "stated all hauling charges have been dismissed", and Brooke had done nothing wrong. After this article there was a request for staff to turn over the documents and they refused. I went to the states Ombudsman office and requested their help to have those documents turned over see formal complaint. ARS-40-365; every public service shall file with the commission, and shall print and keep open to public inspection, schedules showing all rates, tolls, rentals, charges.....

2. **Formal Complaint and the Brooke Utilities issues January 2012**

After filing the formal complaint and asking the ALJ to enjoin Brooke Utilities to the complaint Robert Hardcastle complained that Brooke Utilities should not be a party to the complaint, was not under the jurisdiction of the commission. The ALJ ruled that the Commissioners would settle the issue later, even though the facts and evidence in the formal complaint showing *Brooke Utilities on the consumption sheet staff used to calculate the hauling charges. Billing statements came from Brooke Utilities where customers were directed to make checks payable to Brooke Utilities, and the fact I was making cash payments to Brooke Utilities at APS in Payson.*

3. **The ROO in the month of December 2015**

The ROO page 2. Robert T Hardcastle President for both Payson and Brooke, wholly owned by Brooke. ROO page 20 footnote 29. Mr. Smith did not provide sufficient evidence to justify piercing the corporate veil in this matter. **The Public Record**;C-7 page 1-2; Robert Hardcastle is the Executive Officer and President of Brooke Utilities, Inc and **the sole shareholder of Payson water.** Mr Hardcastle is responsible for managing all operational administrative, financial and regulatory performance of Payson. ROO page 32 line(s) 20-23. Testimony herein establishes Pearson hauled Town water... billed Brooke-MDC, Brooke-EVP

4. **Blacks Law Dictionary 7th edition hereafter(BLD).** **Piercing the corporate veil.** The judicial act of imposing personal liability, on otherwise immune corporate officers directors and shareholders for the corporation wrongful acts. **Corporate veil.** The legal assumption that the acts of a corporation are not the actions of its shareholders, so that shareholders are exempt from liability.

Shareholder. One who owns or holds share or shares in a company, esp a corporation also termed *share-owner*, (in a corporation) stockholder. **Controlling shareholder.** A shareholder who is in a position to influence the corporations activities because the shareholder either owns a majority of outstanding shares or owns a small percentage. **Dummy shareholder.** A shareholder who owns stock in name only for the benefit of the true owner, whose identity is usu, concealed. **Phantom stock plan.** A long-term benefit plan under which a corporate employee is given units having the same characteristics as the employer's stock plan. It is termed a "Phantom" plan because the employee doesn't actually hold any shares but instead holds the right to the value of those shares.

Exhibit C-5 page 14, 15, 16 Brooke Utility deposit into Jaco Oil account; provided by Richard Burt well known and liked in the community of Mesa Del, who was to be called as a witness, suddenly passed away. It is a fact Robert T Hardcastle is employed by Jaco Oil Co check your records!!!!!!

5. **The staffs conduct in this matter.**

The ROO page 35 line 7-12. Further, Mr. Carlson stated that because Staff was very concerned about having ratepayers reimburse the company each month for the prior month, Staff scrutinized the Payson WAS calculations filings more than usual. Every month Payson sent staff the calculations and invoices, and Payson waited for staff approval to asses the WAS on the ratepayers bills.

If these were the facts and staff had all the records then why did Jeffery M. Michlik and Robin Mitchell send an extensive set of data request to Brooke Utilities, Mr. Hardcastle April 12, 2012, C-3 page 49 & 50? These documents had well production reports uncompleted, invoices, BUI haul logs with meter readings, consumption reports and no Town of Payson records. ***Decision 71902 (page10) the amount of the surcharge would depend on the availability of the Company's water pumped from its wells.*** If Staff was so concerned about the ratepayers, then how is it they failed to scrutinize the well productions? How about Payson Water Co did they scrutinize the well production reports. No evidence Staff, Mr Hardcastle, made any attempts to evaluate well production.

I provided testimony and evidence well productions exceeded community consumption.
There is no mention in the ROO about this. Therefore all cost, Town of Payson billings taxes included, and all water hauling cost taxes included are to be refunded for the entire hauling period of 2011. Who knows what happen between 2012 and 2013.

6. Town of Payson issued a meter and billed for those gallons hauled.

Hauling logs meter readings, came from the staffs data request where after close scrutiny by Mr. Smith the meter readings taken each load on different occasions would skip consecutive meter readings, had hauling logs with no Invoices and Invoices with no meter readings. Staff Under Cross Examination, Jeffery Michlik testified he did not look at these documents showing gallons were missing. Robert T. Hardcastle Judge Nodes all suggested these documents were not relevant for the purpose of the WAS (last day of hearing Steve Gehring Video Archives 6:38 to end 2012).

ROO page 33 footnote 63. Mr. Smith repeatedly used the Pearson invoices and hauling logs as evidence of the actual amounts of water hauled rather than as evidence of the cost charged by Pearson for the hauling services. *I do not know what the ALJ is suggesting here, but the sole purpose for hauling water was to supply the community with water, not drive @ \$150.00 per hour.*

ROO pages 49,32,33; Page 49, Payson hired Pearson to haul the water purchased. Page 32, hauling logs show the Town of Payson water activities. Pearson hauled Town water on an hourly basis, not by load, not by gallons. Page 33, Pearsons drivers wrote meter readings down on each load on the hauling logs, which were provided to Brooke when the hauling was over. Pearson hauling log meter information and load counts were provided for Paysons informational purposes, not for any billing purposes. Pearson EVP invoices show no meter readings.

Maybe the Commissioners could explain why the Town Of Payson was billing the customer's of the MDC system for water purchased off the meter, but according to Judge Nodes, Mr. Hardcastle, Mr. Pearson and Staff Jeffery Michlik these are not relevant to the facts.

7. The emergency application.

What is more disturbing is the fact the same Pearson and his documents were used to support the evidence Company was in financial trouble. These public records, the invoices show exactly how many loads were hauled from each location and exactly how many hours (travel time) for each load. Exhibit 1 shows exactly how many loads were hauled. Staff must not have been aware that Indian Creek, Tonto, Gisela, Starlights Pines are miles and miles apart. Date 5/18/09 Invoice # 8745 Indian Creek to Mesa Del – 6hrs EA. Tonto @ 3.25 hrs ea. Date 7/13/09 Invoice # 7854 Starlight to Mesa Del @ 3.25 hrs ea, Gisela to Mesa Del @ 3.25ea, Gisela to East Verde @ 3.25 hrs ea.

Starlight Pines is approximately 65 miles one way from Mesa Del. Gisela is about 25 miles one way. I asked Mr. Pearson where Indian Creek is located and he said he thought it was Deer Creek. Compare this to the documents submitted to staff in 2011 exhibit 1 in the ROO there are no records of loads

Since I was not allowed to cross examine Mr. Hardcastle maybe the Commissioners would like to call him back and explain to the ratepayers how the invoices of 2009 to collect revenue, and load counts were so accurate vs when the ratepayers started paying, suddenly they were not billing for load counts, or showing travel time for each load, and the meter readings were not important just the hourly rate. The ratepayers read the public record and can see the evidence, how did the staff not see this?

BLD; Commercial set. The primary documents covering shipment of goods, usu, including invoices, bill of lading, bill of exchange. **Intrinsic fraud.** Deception that pertains to an issue involved in a original action. Examples include the use of fabricated evidence, a false return of service, perjured testimony and false receipts or other commercial documents. **Falsifying a record.** The crime of making false entries or otherwise tampering with a public record with the intent to deceive or injure, or to conceal a wrongdoing. **Frivolous defense.** A defense that has no basis in fact or law. **Sham defense.** A fictitious, untrue defense made in bad faith.

8. Curtailment Tariffs and Commission Rule.

ROO page 25 and line 20 (27) taken from Decision 71902 page 7 The definition of “daily use has been modified. Under the newly proposed language, percentage reductions (based on the applicable Stage) are taken from the higher of: (a) the immediately proceeding months actual water consumption, or (b) water consumption for the same month. **In fact the disconnection notice methodology used by Payson does not comply with the curtailment tariff and commission rule.** See ROO In fact the Curtailment tariff schedule has defined a curtailment period “ On peak season and off peak season” May thru September. Every public record in the Company annual reports shows customers are fined all year around. **Payson Water Co is violating the curtailment tariff and Commission Rule.**

The ROO (see page 27 line 13-16) indoor water use; **it is impossible to implement a curtailment tariff for outdoor water use without having two meters.** Decision 67821: proposing a “reconnection fee for violation” during the mandatory Stage 3, 4 and 5 conditions, when outdoor watering is prohibited (the amended curtailment tariff for Decision 71902).

It is the Company's position that water conservation will only be achieved if the parties responsible for wasting water face the consequences for such actions, including appropriate economic penalties. Otherwise, the impact of one individual wasting water is unfairly placed on all of the water system's customers.

Decision 71902 page 8 (30) According to Mr. Hardcastle MDWC was instrumental in fashioning the proposed Curtailment Tariff.... in determining the reconnection fee in order to discourage from wasting water. Page 9. The Company will monitor customers who are identified as high water users and will contact them....The Company understands high water usage creates the need to haul water. **All customers (see formal complaint, appendix "B" page 4) of the nine(9) water systems were being fined for using outdoor water only. There are 2 known locations where water was being imported the MDC system and the EVP system.**

9. Curtailment tariff fines.

ROO see page(page 20) Staff called as its witness Darron Carlson; under cross examination he stated the company was going busted, but was not aware Decision 67821, the Company had a cost recovery (reimbursable) by the collection of fines from all 9 water systems, for hauling water. Staff report(2010) C-6 page 4, 31. Page 4, Staff report paragraph 3 The company cannot further absorb water augmentation costs. Page 31 the Company currently has a curtailment tariff that was approved by Decision No. 67821. Decision 71902 page 8 No. 35, In the past Company has collected a few fines from customers who have violated the curtailment tariff and deposited these monies into ***a segregated impound account for use in water conservation and water development.***

Decision 67821 page 3 lines 18-14 uses different language. ***The monies collected under this tariff shall be deposited into a separate interest bearing account and used solely for the purpose of paying for importing water to the Company (such as hauling water or connecting to and buying water from another water system).***

BLD; **Tariff, (n)** Schedule or system of duties imposed by government on **imported goods** or exported goods. The United States tariffs are imposed on **imported goods** only. **Autonomous tariff.** A tariff set by legislature rather than a commercial treaty (ARS 40-321). **Revenue tariff.** A tariff enacted solely or primarily to raise revenue. A fee that a public utility or telecommunications may asses for its services. Tariffs that a provider my charge are limited by statute. A schedule listing the rates charged for services provided by a public utility, the U.S. Postal Service, or a business (esp. one that must file its rates with a public agency)..

Staff report clearly shows **staff listed a tariff schedule for rates (DRE-2) for hauling imported water into Mesa Del and put a time limit for the water hauling.** BLD; **comparative interpretation.** A method of statutory interpretation by which parts of the statute are compared to each other, and the statute as a whole is compared to other document **“ARS 40-321(B)/DRE-2”** from the same source on a similar subject. **Reasonable time** (Contracts). The time needed to do what a contract requires to be done based on subjective circumstances. If the contracting parties do not fix a time for performance, the law will usu., presume a reasonable time. **Mandatory statute.** A law that requires a course of action as opposed to merely permitting it.

The ROO and Judge Nodes testified when I brought the issue to light in the footnote of Decision 71902 page 6, water hauling would be less expensive due to the time required and the short distance. It is the ALJ(s) position that the only tariff approved was the “methodology”. ARS 40-321. **Power of commission to determine adequacy of service rendered by public service corporations; enforcement by rule or order or regulation; duty of compliance.** Subsection B The commission shall prescribe regulations for the performance of any service of any commodity, and upon proper demand and tender of rates, the public service corporation shall furnish the commodity or render the service within the time and conditions prescribed.

DRE-2 is a tariff schedule, time required 1.2 hours, rental fee \$150.00 per hour, City of Payson water rate 5.99 per thousand gallons.....it is a fact Company has been importing water and the curtailment tariffs clothed “under the guise” of water conservation are in fact a revenue tariff. ***The methodology is not relevant (moot) to the performance of a contract and reasonable time to deliver water. The public record, Decision 71902 makes a reference to the time required.*** This is a question of Law and a statutory mandate. Maybe the Commissioners would settle the issue at law.

10. Badge of fraud. (BLD) A circumstance that the courts generally interpret as a reliable indicator that a party to a transaction was trying to hinder or defraud the other party, such as a transfer in anticipation of litigation, a transaction outside the usual course of business, or a false statement. Motion to Quash subpoena has erroneously included Brooke as a party. Brooke Utilities Inc, is not an Arizona public service corporation does not provide water service to the customers of Mesa Del and is not regulated by the Arizona Corporation Commission.

ROO page 35 line 19-24. Town of Payson Administrative Policy, states Brooke Utilities is a public service corporation and responsible for hauling water. Town of Payson LaRon Garret testified, that under this town policy water hauling to the East Verde Park was not authorized.

Town records evidence show Brooke Utilities were in fact being billed and taxed and passing the cost onto the Mesa Del Caballo and East Verde Park Customers. **What needs to be explained is how the taxes were applied to the customers accounts and separated from the EVP system vs the MDC system. In addition how many times were the customers taxed for the water.**

Withholding of evidence (BLD). The act or an instance of obstructing justice by stifling or suppressing evidence knowing that it is being sought in an official investigation or a judicial proceeding. Fact Decision 71902 gave notice the Town of Payson was the sole provider for the importing of water to the MDC system no where does this mention East Verde Park. The Town of Payson Administrative Policy was written in 2010 Mr. Hardcastle deliberately, intentionally, willfully, failed to produce relevant and vital documents and ignored subpoena and misrepresented that he had complied with all subpoenas.

A fact, this entire proceeding has motions for sanctions for hiding documents and evidence to the ALJ who simply took it under advisement "called judicial abnegation". There are many, many, motions with case law, filed and docketed in this case for the refusal to rule on any matter and complaints for judicial misconduct (malfeasance, misfeasance) cross examination (due process) and complaints of staffs conduct.

11. Water shortage and inadequate storage.

Decision 71902 page 9,10 item 43. According to Mr. Scott, the MDC system's 105,000 gallons of storage is sufficient to serve only 305 connection and this factor coupled with poor water production of the nine wells on the system create the Company's water shortage on the MDC system.

Staff report (2010) , "Memorandum" Marlin Scott Jr. to Darak Eaddy capacity Staff has estimated the peak day demand to be 0.30 GPM per connection for evaluating well production. Staff has estimated **345 gallons per day ("GPD") per connection**. The well capacity totaling 59 GPM could adequately serve up 197 connections. For its storage capacity of 105,000 gallons could provide 305 connections with one days worth of storage. If the well production is considered in the storage capacity requirement. What requirement? This system could provide up to **500 connections with one day worth of storage**.

I asked Brad Morton and in the office's at the Commission (trying to resolve the disconnection notice and fine) what is causing the water shortages (in 2011) in the community? Well productions or customers using too much water he said both.

As I pointed out previously the Company position is high water use creates the need to haul water. I presented to them the first hauling period in June of 2011 the total consumption is 1,234,320 gallons and divide that by # of customer's 365 (approx) equals 3,390 gallons.

See Formal complaint. I applied this methodology to the 2010 annual reports and customers rarely used even in the summertime **124 gallons per day ("GPD")**. Using this formula " number of connections vs total consumption" the community did not surpass the supposed 4,000 gallon limit. Mr. Scott (staff) **345 gallons per connection with well production and storage provides 500 connections. how much would 130 gallons per connection provide?**

12. Hutchinson Account Refund.

The ROO wants to credit the Hutchinson account. I could not prove I was a customer, because I had no access to the records of the Brooke Utilities customer service center. In 2009 (Motion to Dismiss Portion of Complaint evidence) Mr. Smith called to verify address and said he was not receiving mail and had to pay a reconnection fee. I had to contact the property owners to get the mail forwarded to the correct address hence (C/O J. Alan Smith). It is not my job to enter the correct information on the account.

13. Violations of law in this matter.

1. Tampering with a public record Arizona Revised statutes (hereafter ARS) 13-2407 (A) 1, 2, 3, 5 is a class 6 felony.
2. Interference with Judicial and other proceedings ARS-13-2801, 13-2802, 13-2804, are class 5 and 6 felonies.
3. Conspiracy ARS 13-1003, United States Code (hereafter USC) 18-19-371 (life in prison).
4. Duress ARS 13-412
5. Fraud ARS 13-2202 (2)
6. Perjury ARS 13-2703 and 13-2704 and 13-2705
7. Conspiracy against right of Citizen ARS- 13-1003 USC 18-242 (life in prison)
8. Deprivation of rights under color of law USC 18-13-241 and 242
9. Denial of due/process/equal protection, Arizona State Constitution XII V
10. Ricco Act ARS 13-2314.04 et. Seq., USC 18 chapter 96, section 1962-1968
11. Criminal liability ARS 13-303 (B) (2)
12. Deceptive business practices ARS 13-2202 (A) 1 and 2

14. SUMMARY

The years 2011-2013 the small community of Mesa Del a population of around 1,200 people paid out approximately \$ 200,000 dollars in those summertime months, for outrageous hauling fees, curtailment tariffs and according to your ALJ(s) and Staff its all legitimate.

Filing a formal complaint has been a waste of time and resources for a number of reasons. The hearing division does not know how to enforce subpoenas. Does not know how to enforce the attendance of witness. Does not know who is regulated. Does not know who the shareholder is. Does not care about the staffs memorandum and its water hauling tariffs cost limits. In fact it makes it very clear ratepayers do not need to know the facts and can not know the facts. When they do find evidence of fraudulent activities and criminal activities you turn your backs and pretend not to see, or hear.

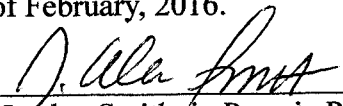
Administrative agencies not only have the power to acquire information; they have authority to release information in performance of their duty to keep the public informed of the agencies operation. The power to require records and reports is necessary if the commission is to know just how the business is carried on so that it may regulate it effectively.

Law enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and the public interest. Statutes enacted by the legislature prescribe rules that must be followed. The rule of statutory effect should give way to prevent injustice when an administrative official has led people to rely upon advice or assurance to their detriment.

The words above, written by a Law Professor (see C-5) has lost meaning and value. In today's society at least here, in this matter, those statements above, are not true. The agency and all its legal power and the public service corporation(s) / (color of law), has once again won another legal battle using; **BLD; Willful blindness**. Deliberate avoidance of knowledge of a crime, esp by failing to make a reasonable inquiry about a suspected wrongdoing despite being aware that it is highly probable. **Substantial-continuity Doctrine**. A principle for holding a successor corporation liable for the acts of its predecessor corporation, if the successor maintains the same business. Williamson said he had no business relationship with Hardcastle, then why did he fill out the WIFA loan application using the same billing company Lightstorm S.A., known as Brooke Utilities customer service center in Costa Rica. Robert Hardcastle, LinkedIn website is very clear about his business activities. I wonder if there was a windfall from the stock sale, and the ratepayers are paying a percentage of the rate hike through a hidden APR as a possibility with J.W. Water holdings. **Maybe the Commissioners could look?**

Wherefore, notice is given to the Commission for a rehearing and/or notice of criminal activities.

Respectfully submitted this 16 day of February, 2016.


J. Alan Smith, in Propria Persona

CERTIFICATE OF SERVICE

The Original and 13 copies of the foregoing;
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Arizona Corporation Commission
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Phoenix, Arizona 85007

Copies of the foregoing mailed
This ____ day of February 2015, to:

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By:


J. Alan Smith